

Date of pronouncement:- 01.10.2026

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION NEW DELHI**

CONSUMER COMPLAINT NO. 2463 OF 2018

Neo Essel Dispoware Pvt. Ltd.
Corporate Office at
4, Fairlie Place, 5th Floor,
Kolkata – 700 001

..... *Complainant*

Versus

Oriental Insurance Co. Ltd.
Head Office, Oriental House
A-25/27, Asaf Ali Road,
Delhi – 110002.

..... *Opp. Party*

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.), PRESIDING
MEMBER**

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

Appearance at the time of arguments:-

For the Complainant : Mr. Akansha Mehra, Advocate
Ms. Milli Tomar, Advocate.

For the Opp. Party : Ms. Devmani Bansal, Advocate.

JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

ORDER

1. Present Complaint has been preferred on behalf of the Complainant aggrieved against the repudiation of claim by Oriental Insurance Company (OP) citing non-compliance of Section 64VB(1) of the Insurance Act, 1938 and claiming that premium in respect of the policy in question was paid by the Complainant beyond the next

succeeding month on which the risk was assumed by OP, despite the fact that assurance was given by OP through e-mail dated 17.10.2014 granting facility to pay within 120 days subject to furnishing of Bank Guarantee by the Complainant.

2. In brief, as per the case of the Complainant who is engaged in manufacturing of food grade plastic, an Industrial All Risk Policy was initially obtained from OP for the year 2014-15 on payment of premium of Rs.30,22,329/-. For purpose of availing of policy, OP vide e-mail dated 17.10.2014, allowed the Complainant to furnish Bank Guarantee upto 120 days for payment against the premium payable. Thereby the Complainant could pay the premium during the period of bank guarantee furnished by him which was valid upto 120 days.

3. It is further the case of the Complainant that on the basis of furnishing similar Bank Guarantee against the premium payable for Rs.43,00,000/-, an Industrial All Risk Policy was further issued for the period 17.10.2015 to 16.10.2016.

4. Similarly, on the basis of furnishing Bank Guarantee facility, the policy in question was issued for the period 17.10.2016 to 16.10.2017 with sum assured of Rs.96,08,00,000/- for fire, Rs.50,40,00,000/- for machinery break-down and Rs.10,00,000/- for fire loss of profit. The Bank Guarantee was furnished on behalf of the Complainant on

14.10.2016 before the commencement of the policy with validity upto 15.02.2017 against insurance premium for Rs.28,00,000/- (Rupees Twenty Eight Lacs Only).

In an unfortunate incident of fire at 11.00 p.m. on 29.10.2016 in the insured premises, Complainant suffered loss and claim form was accordingly submitted. As per the Complainant, in terms of the Bank Guarantee, insurance premium of Rs.28,00,000/- (Rupees Twenty Eight Lacs Only) was paid on 18.01.2017 through cheque dated 17.01.2017, which was within the stipulated period of 120 days of validity of Bank Guarantee facility provided by OP and the Bank Guarantee was to expire on 15.02.2017. However, despite issuance of the policy and acceptance of the premium amount, OP repudiated the claim citing non-compliance of Section 64VB(1) of the Insurance Act, 1938 r/w Rule 58(i) of the Insurance Rules, 1939 *vide* letter dated 08.05.2018.

5. Aggrieved against the repudiation of claim by OP, present Complaint has been preferred by the Complainant seeking following reliefs:-

- a) The OP be held deficient in providing services to the complainant; and*
- b) The repudiation of the claim under Industrial All Risk Policy No. 311800/11/2017/290 is without basis and invalid; and*
- c) The claim amount of ₹ 6,12,87,380/- with 12% interest from 29/10/2017 be paid to the Complainant; and*

d) The Industrial All Risk Policy No. 311800/11/2018/340 should be declared to be valid from 17/10/2017 to 16/10/2018;

e) The Complainant should be compensated with ₹2,0,000/- for harassment and mental agony by the OP; and

f) The Complainant should be compensated for litigation costs of ₹1,00,000/-; and

g) Pass any such further order(s) as this Hon'ble Commission may deem fit.

Stand of OP

6. As per the stand taken on behalf of the OP, an Industrial All Risk Policy was issued to the Complainant initially for the period 17.10.2014 to 16.10.2015 subject to Bank Guarantee facility but the same did not extend the date on which the Complainant was required to make payment of premium in accordance with Section 64VB(1) of the Insurance Act 1938. It is further submitted that the Bank Guarantee facility for the period 2014-15 was only for the concerned year 2014-15 and could not be considered valid for the subsequent years. However, the insurance policy is further stated to have been renewed and extended for the period 17.10.2015 to 16.10.2016, 17.10.2016 to 16.10.2017 and 17.10.2017 to 17.10.2018 wherein Bank Guarantee was furnished on behalf of the Complainant to secure the payment of premium amount.

7. The Bank Guarantee furnished by the Complainant for the period 17.10.2016 to 16.10.2017 for a sum of Rs.28,00,000/- is stated to have

been issued against the express provisions of Insurance Act 1938 and Insurance Rules 1939. Any liability on the part of OP was denied since Section 64VB of the Insurance Act 1938, makes it clear that OP is liable to assume the risk only after the Complainant has made the payment of the premium amount and not on any prior date.

8. It is further the stand of OP that after being reported of the incident of fire on 29.10.2016, Mehta & Padamsey Insurance Assessors & Loss Assessors Pvt. Ltd. (hereinafter referred to as the Surveyors) were appointed on 01.11.2016, for assessing the loss caused to the Complainant. Initially the Complainant filed claim for Rs.6,09,83,847/- on 06.12.2016 which was revised in May, 2017 to Rs.6,12,87,380/-. OP further averred that premium of Rs.28,00,000/- was only paid vide cheque dated 17.01.2017, which was credited on 25.01.2017, much beyond the permissible period under Section 64VB of the Insurance Act. The claim is stated to have been rightly repudiated vide letter dated 08.05.2018, in view of mandate of Section 64VB of the Insurance Act read with Rule 58 of the Insurance Rules, 1939 as the statutory compliance of payment of premium within stipulated period had been violated by the Complainant.

9. OP further submitted that a final report was submitted by the Surveyor on 28.07.2018 whereby the net loss suffered by the

complainant was quantified at Rs.4,18,89,413/-. OP emphasized that in terms of Rule 58 of Insurance Rules, 1939, Complainant was required to make payment of the premium amount by end of the succeeding month in which the risk was assumed i.e. 30.11.2011 and the same was the last date for payment of premium amount. OP averred that merely because the Bank Guarantee had been furnished till a later period upto 120 days, the same did not adequately comply with requirement of Rule 58 of Insurance Rules. 1939. Accordingly, any deficiency in service by OP was denied.

Evidence

10. In support of its case, Complainant led evidence of Shri Dilip Kumar Choraria, Chief Financial Officer of the Complainant by way of affidavit and exhibited copy of Board Resolution as Ex.C-1; copy of IAR Policy No. 311800/11/2017/290 as Ex. C-2; copy of e-mail dated 17.10.2014 as Ex. C-3; copy of Certificate under Section 65B of Indian Evidence Act, 1872 in respect of e-mail dated 17.10.2014 as Ex. C-3A; copy of Bank Guarantee No. BG00297IG0000013 as Ex.C-4; copy of IAR Policy No. 311800/11/2015/237 as Ex.C-5; copy of cheque No. 688482 dated 19.01.2015 as Ex.C-6; copy of Bank Guarantee No. BG00297IG150000007 dated 15.10.2015 as Ex. C-7; copy of IAR No. 311800/11/2016/324 as Ex. C-8; copy of cheque No. 689887 dated

27.01.2016 as Ex. C-9; copy of e-mail dated 14.10.2016 with enquiry slip as Ex. C-10; copy of Bank Guarantee No. BG00297IG160000006 dated 14.10.2016 as Ex.C-11; copy of letter dated 17.10.2016 of issued by OP accepting Bank Guarantee as Ex.C-12; copy of e-mail dated 31.10.2016 as Ex. C-13A and copy of claim form as Ex. C-13B; copy of cheque No. 549481 dated 17.01.2017 as Ex. C-14; copy of the Bank Guarantee No. BG00958IG170000060 dated 16.10.2017 as Ex. C-15; copy of IAR No. 311800/11/2018/340 as Ex. C-16; copy of cheque No. 755056 dated 22.12.2017 as Ex. C-17; copy of repudiation letter dated 08.05.2018 as Ex. C-18; copy of Complainant's protest letter dated 01.06.2018 as Ex. C-19; copy of letter dated 21.06.2018 issued by OP as Ex.C-20; copy of Complainant's letter dated 27.06.2018 as Ex. C-21; copy of claim form in respect of factory fire dated 09.12.2014 as Ex.C-22 and copy of discharge vouchers dated 18.11.2015 as Ex.C-23.

11. On the other hand, OP led evidence of Shri Bipin Kumar, Chief Manager of OP by way of affidavit and exhibited copy of IAR Policy No. 311800/11/2017/290 dated 17.10.2016 as Ex.OP/1; copy of claim form as Ex.OP/2; copy of IAR No. 311800/11/2018/340 as OP/3 (Colly.); copy of repudiation letter dated 08.05.2018 as Ex.OP/4; copy of letter dated 21.06.2018 as Ex.OP/5 and copy of report of the Surveyor dated 28.07.2018 as Ex.OP/6.

Contentions on behalf of the Complainant

12. Ld. Counsel for the Complainant reiterates that prior to obtaining the policy in question on 17.10.2016, Complainant had obtained an Industrial All Risk (IAR) Policy from the OP under a Bank Guarantee facility for the period 17.10.2014 to 16.10.2015; 17.10.2015 to 16.10.2016. Further, a policy was subsequently obtained on 17.10.2017 with similar conditions for the period 17.10.2017 to 16.10.2018.

He argues that in case of any such prohibition existed to issue the Industrial Risk Policy against Bank Guarantee facility for payment of premium, duty lay on OP to refrain from issuing the policy. However, having accepted the premium and issuing a policy, OP could not have retracted and repudiated the claim.

13. Ld. counsel emphasizes that prior to procuring the first IAR Policy OP had agreed to offer Bank Guarantee facility (BG facility) to the Complainant for a period of 120 days through e-mail dated 17.10.2014 whereby the Insured agreed to cover the risk of receiving Bank Guarantee towards payment of premium, without waiting for the actual payment of the premium, which was deferred for an agreed period. The first policy obtained on 17.10.2014 is stated to have been renewed for the second and third term without any objection on similar Bank Guarantee facility.

14. Ld. Counsel for Complainant further points out that during the operation of first IAR Policy (Industrial All Risk Policy), Complainant had made a claim for loss due to fire which occurred on 09.12.2014 and the same was accepted by OP, though the premium was subsequently paid on 19.01.2015 (i.e. later than the date of loss but before the mutually agreed period of 120 days as per the Bank Guarantee facility).

15. On merits, the repudiation of claim vide letter dated 08.05.2018 during the operation of third IAR Policy is challenged as the premium for the Policy was paid through cheque dated 17.01.2017 (i.e. much before the expiry of the agreed period of 120 days in terms of Bank Guarantee). He emphasizes that Insurance Company is estopped from repudiating the claim on ground of non-compliance with the statutory requirements of Section 64VB(1) of the Insurance Act, 1938 read with Rule No. 58(i) of Insurance Rules, 1939.

16. Ld. Counsel further contends that OP had repudiated the claim since the premium was not paid before 30.11.2016. However, it is pointed out that the Complainant had suffered the loss on 29.10.2016 and still there was plenty of time for Complainant to pay the premium before end of 30.11.2016. He emphasizes that had the curtailment of period of payment of premium been intimated to the Complainant by the OP, the same could have been accordingly deposited. He argues that

OP deliberately remained silent and did not inform the Complainant that premium should be paid before 30.11.2016 and the same was paid in accordance with the terms of the Bank Guarantee vide cheque dated 17.01.2017 and was accepted by OP. As such, OP is stated to have acted in bad faith, without indicating to the Complainant the clear procedure expected to be followed in case there was any deviation from the earlier practice to be followed by OP. The conduct of OP is stated to be dishonest as well as fraudulent and the claim is stated to have been illegally denied. He further urged that condition requiring payment of premium before liability, can be waived by the Insurer. In support of the contentions, reliance is further placed upon ***Montreal Street Railway Company v. Normandin*, AIR (1917) Privy Council 142.**

17. Ld. Counsel further contends that though the claim was repudiated by OP by referring to Section 64VB(1) of the Insurance Act, 1938 and Rule 58 of the Insurance Rules, 1939 but in the written version, reliance is further placed upon Section 64VB(2), which is not permissible in law. Reference in this regard is made to ***Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd.*, (2019) 19 SCC 70; *Galada Power & Telecommunications Ltd. v. United India Insurance Co. Ltd.*, (2016) 14 SCC 161 and *Prakash Industries Ltd. v. National Insurance Co. Ltd.*, 2006 SCC OnLine NCDRC 33.** Reliance is further placed by Ld.

Counsel for the Complainant on ***ECGC Limited v. Mittal Technopack Private Limited and Another***, 2024 SCC Online Cal 1291; ***New India Assurance Co. Ltd. v. Rula and Others***, (2000) 3 SCC 195 and ***Vishnu Bhagwan Agarwal and Another v. National Insurance Company Limited***, (2018) 12 SCC 210.

Contentions on behalf of OP

18. On the other hand, Complaint is opposed by Ld. Counsel for OP (Oriental Insurance Co. Ltd.) and it is vehemently contended that the premium of Rs.28,00,000/- for the Industrial All Risk Policy dated 17.10.2016 was paid on 17.01.2017, against the express provisions of Section 64VB of the Insurance Act, 1938 r/w Rule 58 of the Insurance Rules, 1939. Ld. Counsel for Insurance Company emphasizes that the Insurer could not have assumed the risk until and unless the premium is received or guaranteed to be paid in advance in accordance with the aforesaid provisions. Further, if the premium is guaranteed to be paid by a banking company, the payment should be guaranteed before the end of next succeeding calendar month from the date of assumption of risk. He further contends that the Insurer can assume the risk from a retrospective date provided such date is not earlier than the date on which premium had been paid in cash or by cheque to the Insurer. Ld. Counsel for OP further points out that the terms of the Bank Guarantee

furnished by Complainant were contrary to Rule 58 of the Insurance Rules, 1939 and, as such, the liability could not be imposed on OP. He further submits that each policy is a separate contract of insurance between the parties and reliance could not be placed by the Complainant on the earlier policies for the year 2014-15 and 2015-16.

19. Ld. Counsel for OP further contends that there cannot be estoppel against law and parties by consent cannot confer legality to illegal acts or convert wrong into right. He further submits that the rights and obligations in a contract of insurance are strictly governed by the policy of insurance and no exception or relaxation could be made on grounds of equity.

Analysis/Findings

20. We have heard Ld. Counsel for the parties and given considered thought to the contentions raised.

In order to appreciate the contentions raised on behalf of the parties, the details of the policies issued by OP as tabulated on behalf of Complainant may be reproduced for reference:-

S. no.	Bank Guarantee	Policy no.	Period of Insurance as per Policy	Premium payment through
1st	BG dated 17/10/2014	IAR policy no. 311800/11/2015/237 dated 17/10/2014 for premium of ₹30,22,329/-	"FROM 00:00 hours 17.10.14 TO Midnight of 16.10.15"	Cheque no. 688482 dated 19/01/2015

2nd	BG dated 15/10/2015	IAR policy no. 311800/11/2016/324 dated 17/10/2015 for premium of ₹43,00,000/-	"FROM 00:00 hours 17.10.15 TO Midnight of 16.10.16"	Cheque no. 689887 dated 27/01/2016
3rd	BG dated 14/10/2016	IAR policy no. 311800/11/2017/290 dated 17/10/2016 for premium of ₹28,00,000/-	"FROM 00:00 hours 17.10.16 TO Midnight of 16.10.17"	Cheque no. 549481 dated 17/01/2017
4th	BG dated 16/10/2017	IAR policy no. 311800/11/2018/340 dated 17/10/2017 for premium of ₹97,94,000/-	"FROM 00:00 hours 17.10.17 TO Midnight of 16.10.18" year context]	Cheque no. 755056 dated 22/12/2017

We may also notice that OP has not disputed that an earlier claim preferred by the Complainant relating to the policy for the period 2014-15 was allowed though the policy had been issued subject to furnishing of Bank Guarantee valid for period of 120 days.

21. In order to appreciate the objections raised on behalf of OP justifying the repudiation of claim, Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939 may be reproduced for reference:-

"Section 64VB - No risk to be assumed unless premium is received in advance

(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed

not earlier than the date on which the premium has been paid in cash or by cheque to insurer.

Explanation. Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be. ..."

22. Rule 58 of the Insurance Rules, 1939 pertaining to advance payment of premiums for purpose of sub-section (1) of the Section 64VB of the Insurance Act, 1938 further lays down as under:

"58. Advance payment of premiums.- For the purposes of sub-section(1) of Sec, 64-VB of the Act, a risk in respect of a policy may be assumed before the premium payable in respect thereof is received:

(i) If the entire amount of the premium is guaranteed to be paid by a Banking Company before the end of the calendar month next succeeding to the month in which the risk is assumed, if the premium due is not paid by the insured before that date;

(ii) If an advance deposit is made with the insurer to the credit of the insured sufficient to cover the payment of the entire amount of the premium together with the premium, if any, due from the insured in respect of any other risk already assumed against such deposit, such deposit being agreed to be adjusted towards the premium before the end of the month next succeeding to the month in which the risk is assumed, if the premium due is not paid by the insured before that date."

23. A combined reading of Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939, clearly lays down that the Insurer shall not assume the risk unless and until premium payable is received or guaranteed to be paid in such manner and within such time as may be prescribed. Rule 58 of the Insurance Rules, 1939

prescribes that for purpose of sub-section (1) of Section 64VB of the Insurance Act, 1938, a risk in respect of the policy may be assumed before the premium payable is received, **if the entire amount of premium is guaranteed to be paid by a company before the end of the calendar month next succeeding to the month in which the risk is assumed.** Thus, the policy issued by the Insurance Company may be valid and the risk can be assumed only if the Complainant guarantees the payment of premium by furnishing a Bank Guarantee and the premium is paid before the end of the next succeeding month.

24. Admittedly, in the present case, the payment of premium against Bank Guarantee has not been made within the period stipulated in terms of Rule 58 of the Insurance Rules, 1939, whereby the premium guaranteed to be paid was required to be deposited before the end of the calendar month next succeeding the month in which the risk was assumed (*i.e.* 30.11.2016). Also, the case of the Complainant does not fall within Rule 59 of the Insurance Rules, 1939, which provides for categories of Insurance Policies wherein the requirement of sub-section (1) of Section 64VB of the Insurance Act, 1938 may be relaxed to the extent and manner mentioned therein.

25. In the aforesaid context, observations of Hon'ble Madras High Court in ***Shriram Investments Ltd. & Ors. v. Oriental Insurance Co. Ltd. & Ors.***, 1999 SCC OnLine Mad 963 in para 8 are apt to be noticed:

*"8. A reading of Sub-section (2) of Section 64VB makes it clear that in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. The proviso to the above section says that where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be. **As contended by learned senior counsel for the respondents, Sub-section (2) of Section 64VB has to be read along with Sub-section (1) of Section 64VB. Sub-section (2) prescribes the mode of payment in cash or by cheque but it does not prescribe bank guarantee. Sub-section (1) says that the amount has to be deposited in advance in the prescribed manner. A reading of Sub-section (2) along with Sub-section (1) of section 64VB makes it clear that in the case of the petitioners, the risk is assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. In the circumstances, a reading of the section makes it clear that the premium has to be paid in cash or cheque to the insurer. It does not prescribe the payment by way of bank guarantee. As the statute prescribes the mode of payment by way of cash or cheque, the contention raised by the petitioners cannot have force in view of the provisions of Section 64VB and Sub-section (1) of Section 64VB read with Sub-section (2) of Section 64VB of the Insurance Act. Even though the insurance companies were acting upon the bank guarantee since last many years, they cannot be compelled to act against the statute. Under the circumstances, I see no ground to interfere with the impugned communication issued by the insurance companies. The writ petitions are dismissed. No costs. Consequently, connected writ miscellaneous petitions are also dismissed."***

In the aforesaid case, Appellant therein had challenged a letter issued by OP/Insurer whereby the arrangement for obtaining insurance by the Appellant against Bank Guarantee appears to have been discontinued by OP, relying upon Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939. Hon'ble Madras High Court held that even though the Insurance Companies were acting upon the Bank Guarantee since last many years, they could not be compelled to act against the statute. In view of above, Hon'ble High Court refused to interfere with the impugned communication issued by the Insurance Companies.

26. The point for consideration is, if the Insurance Company was justified in repudiating the claim having issued the Insurance Policy against Bank Guarantee facility in view of Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939.

27. On the face of record, there does not appear to be any separate e-mail or communication addressed by OP to the Complainant for deferring the payment of premium for 120 days against Bank Guarantee facility thereby waiving the mandate cast by Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939, for the policy in question. The Bank Guarantee appears to have been furnished by the Complainant for 120 days based upon the earlier

practice adopted by OP for the insurance policy issued for the period 2014-15. By virtue of Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939, no discretion is vested with OP to defer the stipulated period of deposit of premium beyond the end of the calendar month next succeeding to the month in which the risk is assumed. Admittedly, the payment of premium for the policy in question (i.e. 2016-17) was to be made prior to 30.11.2016 in terms of Rule 58 of the Insurance Rules, 1939 but the premium has been deposited by Complainant vide cheque dated 17.01.2017 (i.e. much beyond the period stipulated in law). The policy in question was subject to the compliance of provisions of Section 64VB of Insurance Act, 1938 read with Rule 58 of the Insurance Rules 1939 and since the payment of premium is beyond the stipulated period, the Insurance Policy cannot be invoked for claiming the loss. Merely because the Insurance Company did not communicate the consequences of non-payment of premium within the stipulated period, the Insurance Policy cannot be validated contrary to the policy of law though we deprecate such earlier practice adopted by OP. There can neither be estoppel in law to take the aforesaid objection by OP, nor a waiver could have been made by the Insurance Company, as the policy cannot be validated in the teeth of

Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939.

28. In *Hero Motorcop Limited v. Union of India & Ors.*, (2023) 1 SCC 38, Hon'ble Apex Court considered if Mandamus can be issued to direct Government to act in a particular way or to exercise its discretionary statutory power in a particular way relying upon earlier exemption notifications issued prior to enforcement of the GST Act. Hon'ble Apex Court referred to judgments passed in *Express Newspaper Private Ltd. v. Union of India*, (1981) 1 SCC 33 in the context of Doctrine of Promissory Estoppel referred in paragraph 62 and 63 and held that no estoppel can legitimize action which is *ultra vires*. It was further held that principle of estoppel does not operate at the level of Government policy. The observations therein may be reproduced for reference:-

“62. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion malafidely or on an irrelevant consideration.

63. This position was again reiterated by this Court recently in the case of Bharat Forge Ltd. (supra) as follows:

“18. Therefore, it is clear that a Writ of Mandamus or a direction, in the nature of a Writ of Mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise from a Statute

ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public duty in a Statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority. A Writ of Mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court.” [emphasis supplied]”

29. The insurance contracts are strictly governed by the terms and conditions of the policy and normally a liability under the contract of insurance arises only on payment of premium, if such payment was a condition precedent. However, a condition which is intended for the benefit of the Insurer can be waived, subject to the condition that no public interest is compromised and is not in the teeth of statutory provisions of law which are incumbent to be followed by the Insurer.

30. *M/s Prakash Industries Ltd. v. National Insurance Co. Ltd.* (supra) relied upon by the Complainant is distinguishable since in the aforesaid case, the premium was paid in terms of the Bank Guarantee before the end of the next succeeding month in terms of Rule 58 of the Insurance Rules, 1939.

31. In *ECGC Limited v. Mittal Technopack Private Limited and Another* (supra) relied by Complainant, the Insurer had issued the Insurance Policy to the respondents for a period of 12 months on deferred payment of premium, by agreeing the payment in four quarterly instalments. The insurance premium for coverage of 12 months for Rs.9,10,000/- was payable on quarterly basis and there had been delay in payment of third instalment for which neither the policy cover was cancelled nor the policy in question was terminated. It was held that the appellants having allowed the policy to continue for the entire 12 months on deferred payment of insurance premium in four instalments cannot be allowed to reject the claim of the respondents on the ground of delay in payment of third instalment. It may be noticed that the aforesaid condition of payment was a part of contract itself in the said case and, as such, the rigors of Section 64VB of the Insurance Act, 1938 were held to be non-operative against the respondents.

However, there is no communication addressed by OPs for the purpose of renewal of policy in question, whereby the payment of premium contrary to Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939 was communicated. The aforesaid case, as such, is distinguishable.

32. In *New India Assurance Co. Ltd. v. Rula and Others* (supra) relied by Complainant, Hon'ble Apex Court held that despite the bar created by Section 64VB of the Insurance Act, 1938, if the Insurer issues a policy of insurance to cover the motor vehicle without receiving the premium thereof, the Insurer becomes liable to indemnify third parties in respect of their liability, which that policy covered, irrespective of subsequent cancellation of the insurance policy on ground of dishonour of cheque paid towards the premium. It was further observed that the rights of third party which had accrued on issuance of the policy on the date on which the accident took place would not be affected on dishonour of cheque towards premium.

The aforesaid proposition is to be seen in the context of Section 146(1), 147(5) and 149(1) of the Motor Vehicles Act, 1988 wherein the object is to ensure that third party who suffer injuries due to use of motor vehicle, may be able to get damages from the owner of the vehicle and is protected under the contract of insurance. The case is apparently distinguishable.

33. There is no dispute on the observations made in *Vishnu Bhagwan Agarwal and Another v. National Insurance Company Limited* (supra), wherein Hon'ble Apex Court in the facts and circumstances of the case while upholding the award of the Arbitrator held that terms of

written policy can be changed by mutual agreement of the parties. However, when Insurance Company by its conduct impliedly consented to insured's demand different from written terms of policy, it is within ken of arbitrator/Umpire dealing with insurance dispute to hold insurance company to be estopped by conduct from going back from its consent.

The facts and circumstances of the present case are distinguishable in the absence of any document evidencing that premium was agreed to be deposited beyond the period stipulated in Rule 58 of the Insurance Rules, 1939 read with Section 64VB of the Insurance Act, 1938.

34. Considering the facts and circumstances of the case and the legal position as discussed above, we do not find any grounds to set aside the repudiation of claim by OP *vide* letter dated 08.05.2018.

35. However, it is disconcerting to note that despite knowing the correct position in law, the premium was accepted by OP beyond the permissible period of deposit which ended with the next succeeding month *i.e.* 30.11.2016. No waiver could have been made by OP to accept the premium beyond 30.11.2016 in view of Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939.

Apparently, in order to secure business, officials of OP failed to properly inform the Complainant and adopted the practice of accepting

the Bank Guarantee against premium beyond the period stipulated in law but subsequently read it down subject to provisions of Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939. Even after receiving the information of loss on account of fire, OP failed to inform or notify the Complainant that the premium would not be accepted beyond 30.11.2016 in terms of Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939.

The fundamental principle of insurance law that good faith must be observed by the insurance parties in an insurance contract has been completely overlooked by OP by failing to disclose the factual position and consequences of deposit of the premium amount beyond the period stipulated by virtue of Rule 58 of the Insurance Rules, 1939 (*i.e* till 30.11.2016 in the present case). The duty for disclosure was all the more onerous as even the insurance policy for the year 2015-16 had been issued despite the payment of premium of Rs.43,00,000/- being deposited after the expiry of the next succeeding month in which the risk was assumed, in terms of the Bank Guarantee for a period of 120 days. Apparently, as per the stand of the OP, no valid policy casting liability on the Insurance Company/OP could have been issued, contrary to the provisions of law and in the eventuality of any incident during the previous year, the Insurance Company/OP would have kept itself

absolved by pleading that policy could not have been illegally issued, contrary to Rule 58 of the Insurance Rules, 1939.

36. We are of the considered opinion that OP was under a bounden duty to inform the Complainant about the limitation in respect of date of acceptance of premium and consequences thereupon, as the acceptance of premium is claimed by OP to be in the teeth of the provisions of Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939. In order to take the benefit of the statutory provisions, the entire burden has been subsequently unfairly placed by the OP on the Complainant casting an obligation on him to read the furnishing of Bank Guarantee, subject to provisions of Section 64VB of the Insurance Act, 1938 read with Rule 58 of the Insurance Rules, 1939. Considering the fact that OP failed to give a due disclosure and notice with regard to the date by which the premium would be legally permissible in its true letter and spirit, we take exception to the conduct of OP. The practice adopted by OP apparently misled the consumer/Complainant putting him in a disadvantaged position whereby he could not take adequate remedial steps to deposit the premium before 30.11.2016 despite furnishing the Bank Guarantee and having sufficient period available after the incident of fire on 29.10.2016 till 30.11.2016.

In the facts and circumstances, we direct the OP to refund the premium of Rs.28,00,000/- (Rupees Twenty Eight Lacs Only) deposited by the Complainant with interest @ 12% *per annum* from the date of deposit till realization with compensation of Rs.43,00,000/- (Rupees Forty Three Lacs Only), which is the premium availed by the Insurance Company/OP for the earlier year 2015-16 as OP could not have validly issued the policy even for the period 2015-16, contrary to the provisions of law, as per their own admission and stand. The aforesaid amount is directed to be paid within a period of four weeks. Complaint is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this Order be provided to concerned parties, by the Registry.

Sd/-

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**(AVM J. RAJENDRA, AVSM VSM (RETD.)
PRESIDING MEMBER**

Sd/-

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**(ANOOP KUMAR MENDIRATTA, J)
MEMBER**

ar/sd/B-4/reserved matter